

2006 JUN 30 P 1:41

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June 30, 2006

## VIA COURIER

Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination &  
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Federal Election Commission  
999 E Street, N.W.  
Washington, DC 20463

Re: MUR 5749

Dear Mr. Jordan:

This Response is submitted on behalf of GSP Consulting Corp. ("GSP"), GSP Consulting Corp. PAC ("GSP PAC"), Houston Harbaugh Legislative Services Political Action Committee ("HHLS PAC"), John Dick, Joseph Kuklis, Charles L. Hammel III and Sean McDonald in response to the complaint filed by Citizens for Responsibility and Ethics in Washington ("CREW") in Matter Under Review ("MUR") 5749.

For the reasons set forth below, the Federal Election Commission ("FEC" or "the Commission") should find that there is no reason to believe that (1) Sean McDonald made an excessive contribution to Santorum 2006 in violation of 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b); (2) HHLS PAC solicited contributions from individuals outside its restricted class in

2006 JUN 30 P 2:26

FEDERAL ELECTION COMMISSION  
OFFICE OF LEGAL COUNSEL

29044234994

Jeff S. Jordan  
June 30, 2006  
Page 2

violation of 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1); or (3) GSP facilitated contributions to federal candidates in violation of 11 C.F.R. § 114.2(f). The remaining respondents concede, however, that a number of other violations of the Federal Election Campaign Act of 1971 ("FECA" or "the Act") and/or FEC regulations did inadvertently occur. Respondents began corrective action as soon as these violations were discovered and well before the complaint in MUR 5749 was filed and hereby request that MUR 5749 be referred to the Alternative Dispute Resolution Office for resolution.

**Summary of Allegations**

The complaint in MUR 5749 alleges that the respondents committed a series of violations of FECA and/or FEC regulations primarily related to the operation of the GSP PAC during 2005. Specifically, the complaint alleges (1) that Joseph Kuklis, John Dick and Charles L. Hammel III each made excessive contributions to the GSP PAC in 2005 in violation of 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 110.1(d) and that the GSP PAC accepted these excessive contributions in violation of 2 U.S.C. § 441a(f); (2) that both the GSP PAC and the HHLS PAC solicited contributions from outside their respective restricted classes in violation of 11 C.F.R. § 114.5(g)(1); (3) that the GSP PAC and HHLS PAC were affiliated committees that failed to inform the FEC of their affiliated status in violation of 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 102.2(b) and failed to report their combined contributions under a single contribution limit pursuant to 11 C.F.R. § 110.3(a); (4) that Sean McDonald made an excessive contribution to Santorum 2006 in violation of 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b); and (5) that

29044234995

Jeff S. Jordan  
June 30, 2006  
Page 3

GSP facilitated the making of contributions to federal candidates in violation of 11 C.F.R. § 114.2(f).

Three of these five allegations are simply incorrect and appear to be based on nothing more than CREW's faulty assumptions and deeply flawed interpretation of reports filed with the FEC by GSP PAC, HHLS PAC and others. CREW's allegation that HHLS PAC solicited contributions from outside its restricted class in violation of 11 C.F.R. § 114.5(g)(1) is based solely on CREW's assumption that Joseph Kuklis and John Dick were not executive or administrative personnel of Houston Harbaugh Legislative Services, LLC and therefore were not eligible to be solicited by the HHLS PAC. CREW Complaint at ¶¶ 37-40. In fact, both Joseph Kuklis and John Dick held executive positions with Houston Harbaugh Legislative Services, LLC and as such were members of the restricted class of the HHLS PAC.

Similarly, CREW looks at GSP PAC's report of an earmarked contribution of \$2,000 by Sean McDonald to Santorum 2006 on July 7, 2004 and Santorum 2006's corresponding report of receiving a \$2,000 contribution from Sean McDonald on August 4, 2004 and somehow comes to the conclusion that Sean McDonald must have made two separate \$2,000 contributions to Santorum 2006 within the span of a month and thereby violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b).<sup>1</sup> CREW Complaint at ¶¶ 41-42, Exhibit 13 at 9, Exhibit 14 at 91. In fact, Sean McDonald made one and only one contribution of \$2,000 to Santorum 2006 and, accordingly, did not violate FECA's prohibition on excessive contributions.

<sup>1</sup> CREW's complaint actually cites 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 110.1(d), which is the \$5,000 annual limit on contributions by individuals to political committees. We assume that CREW intended to cite 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b), which is the \$2,000 per candidate per election limit that applied to Sean McDonald's contribution to Santorum 2006 in 2004. Any other interpretation of CREW's complaint would mean that it is both factually AND legally incorrect.

29044234996

Jeff S. Jordan  
June 30, 2006  
Page 4

29044234997

Finally, CREW notes that GSP PAC reported to the FEC that it handled a number of earmarked contributions to federal candidates and that John Dick was quoted in *The Philadelphia Inquirer* making the innocuous statement that, "It is definitely in our interest to support candidates that care about our projects and issues." CREW Complaint at ¶¶ 43-48, Exhibits 13, 16. Based solely on these two tidbits of information, CREW alleges that GSP violated 11 C.F.R. § 114.2(f) by using corporate resources to facilitate contributions to federal candidates. In fact, no such use of corporate resources occurred. The GSP PAC has, however, made a number of in-kind contributions to federal candidates and has reported all of those contributions to the FEC – a fact that CREW should have discovered if it had given the GSP PAC's FEC reports even a cursory review.

There is, unfortunately, some truth to the remaining allegations of CREW's complaint related to the operation of the GSP PAC during 2005. These admitted violations, however, were not an intentional effort to evade FECA, but rather were caused by GSP PAC's decision in April 2005 to switch from using separate federal and nonfederal accounts to a single federal account and GSP's failure to recognize that there were legal ramifications to allowing a joint venture to establish its own separate segregated fund. The facts that lead to these violations are explained in greater detail in the following section. It should be noted at the outset, however, that all of these admitted violations were discovered by GSP PAC personnel months before they became the subject of the complaint in MUR 5749. More importantly, every time GSP PAC personnel discovered that a violation had occurred, GSP PAC took immediate steps to rectify the violation and change GSP PAC operating practices and procedures to ensure that no such violations could occur again in the future.

Jeff S. Jordan  
June 30, 2006  
Page 5

**Statement of Facts and Discussion of Authority**

GSP Consulting Corp. was established by Joseph Kuklis and John Dick in 2001 as a consulting firm which assisted small technology companies in obtaining funding from federal, state and local governments and nongovernmental organizations. Based in Pittsburgh, Pennsylvania, GSP has since expanded to add six additional offices in three states and the District of Columbia. Despite its geographic reach, GSP remains a very small company with only eighteen (18) employees.

GSP PAC was originally established as a Pennsylvania state political action committee under the name Pittsburgh Future PAC. Pittsburgh Future PAC was registered with the Pennsylvania Secretary of State on March 12, 2002 and opened a bank account with Pittsburgh's Iron & Glass Bank on March 26, 2002. Significantly, under Pennsylvania law there is no dollar limit on the amount an individual can contribute to a political action committee. 25 P.S. § 3241 *et seq.* GSP PAC was registered as a federal separate segregated fund with the FEC on September 18, 2002 and opened a separate bank account at Iron & Glass Bank on September 24, 2002. For the next two-and-a-half years, from September 24, 2002 through April 16, 2005, GSP PAC operated with separate federal and nonfederal accounts.

During this period, GSP principals, including Joseph Kuklis and John Dick, regularly made contributions to GSP PAC and allocated their contributions between the federal and nonfederal accounts. During the 2003-2004 election cycle, Joseph Kuklis contributed a total of nineteen thousand eight hundred dollars (\$19,800) to GSP PAC – eight thousand three hundred dollars (\$8,300) to the federal account and eleven thousand five hundred dollars (\$11,500) to the

29044234998

Jeff S. Jordan  
June 30, 2006  
Page 6

nonfederal account. Similarly, during the 2003-2004 election cycle, John Dick contributed a total of sixteen thousand three hundred dollars (\$16,300) to GSP PAC – seven thousand eight hundred dollars (\$7,800) to the federal account and eight thousand five hundred dollars (\$8,500) to the nonfederal account.

On April 16, 2005, GSP, on the advice of its accountant, moved all of its banking business from Iron & Glass Bank to Sky Bank in order to obtain more favorable terms. GSP PAC moved its banking business from Iron & Glass Bank to Sky Bank at the same time and, without realizing the consequences of this action, decided to streamline the operations of the PAC by opening a single bank account to handle both federal and state contributions. Accordingly, Pittsburgh Future PAC filed a termination report with the Pennsylvania Secretary of State on May 2, 2005 and the GSP and Pittsburgh Future PACs closed their bank accounts with Iron & Glass Bank on June 10, 2005 after the last checks written on those accounts had cleared.

During the nine-month span between April and December 2005, Joseph Kuklis and John Dick each continued their established practice of making contributions to GSP PAC as necessary to support both federal and state candidates. Unfortunately, they did so under the mistaken belief that contributions they made to GSP PAC to be used in connection with Pennsylvania state races were still subject to Pennsylvania law and therefore could be made without limit.

On January 16, 2006, GSP PAC's assistant treasurer began to prepare the PAC's 2005 Year-End Report. When she entered the contribution data from the second half of 2005, the PAC's FEC reporting software indicated that Joseph Kuklis, John Dick and Charles L. Hammel

29044234999

Jeff S. Jordan  
June 30, 2006  
Page 7

III had each contributed more than the five thousand dollars (\$5,000) per year permitted by 2 U.S.C. § 441a(a)(1)(C). GSP PAC personnel quickly discovered that these excess contributions had been caused by the PAC's conversion from separate federal and nonfederal accounts to a single federal account and GSP PAC personnel immediately took steps to both rectify the Section 441a(a)(1)(C) violations and make sure that no such violations could occur in the future.

The next day, January 17, 2006, GSP PAC issued a refund check in the amount of \$10,000 to Charles L. Hammel III. The Hammel refund left GSP PAC with only two thousand one hundred and sixty-one dollars and eighty-four cents (\$2,161.84) – insufficient funds to issue refunds to both Joseph Kuklis and John Dick. Accordingly, GSP PAC immediately began soliciting contributions from members of GSP's small restricted class to obtain the funds necessary to make the required refunds. On January 23, 2006, GSP PAC filed its 2005 Year-End Report with the FEC and disclosed the excessive contributions from Joseph Kuklis, John Dick and Charles L. Hammel III. The next day, as funds became available, GSP PAC issued a refund check in the amount of nine thousand dollars (\$9,000) to John Dick. GSP PAC personnel also re-registered Pittsburgh Future PAC with the Pennsylvania Secretary of State – the first step in the process of reverting back to the prior practice of using separate federal and state accounts. On January 27, 2006, GSP PAC and Pittsburgh Future PAC opened separate federal and state accounts with PNC Bank.

On February 13, 2006, as funds became available, GSP PAC issued a refund check in the amount of six thousand eight hundred dollars (\$6,800) to Joseph Kuklis. That same day, GSP PAC received a request for additional information from the FEC's Reports Analysis Division

29044235000

Jeff S. Jordan  
June 30, 2006  
Page 8

29044235001

requesting an explanation for the apparently excessive contributions from Joseph Kuklis, John Dick and Charles L. Hammel III. On March 2, 2006, GSP PAC responded to the letter from the Reports Analysis Division with a letter explaining that the PAC had discovered the excessive contributions during the course of preparing the 2005 Year-End Report and had already issued the required refunds to Joseph Kuklis, John Dick and Charles L. Hammel III. On March 7, 2006, once the refund to Joseph Kuklis had cleared the bank, GSP PAC closed its account with Sky Bank. At that point, GSP PAC believed that it had taken all of the steps necessary to come back into compliance with FECA and to ensure that no similar excess contributions could occur in the future.

On May 1, 2006, however, GSP PAC learned for the first time that there were other potential problems with its FEC reports. On that day, GSP received a telephone call from a reporter for the Capitol Hill newspaper *Rollicall*. The *Rollicall* reporter initially inquired about the excessive contributions that the GSP PAC had reported to the FEC on its 2005 Year-End Report, but then began asking questions about other possible FECA violations, "including accepting PAC contributions from people outside the firm, failing to notify the Federal Election Commission of an affiliation with another PAC and breaking spending limits for affiliated PACs with contributions to Santorum [2006]." CREW Complaint at Exhibit 1. That telephone call was the first time that GSP became aware that its joint venture with Pittsburgh law firm Houston Harbaugh, P.C. had campaign finance implications.

GSP and Houston Harbaugh, P.C. established Houston Harbaugh Legislative Services, LLC ("HHLS") as a joint venture in October 2002 in order to offer GSP's state lobbying



Jeff S. Jordan  
June 30, 2006  
Page 9

29044235002

expertise to Houston Harbaugh's health care clients. HHLS was established as a Pennsylvania limited liability company governed by a Board of Managers. Joseph Kuklis and John Dick were both appointed to the initial Board of Managers of HHLS. Two years after the formation of HHLS, in anticipation of lobbying on the federal level, HHLS registered HHLS PAC as a separate segregated fund with the FEC on November 9, 2004 and opened a bank account at Pittsburgh's Citizens Bank. HHLS PAC never developed into a viable enterprise. During the course of its fourteen-month existence, it received contributions from only six individuals and made a total of five contributions to three federal candidates.

HHLS PAC notified the FEC of its termination when it filed its 2005 Year-End Report on March 9, 2006. The FEC approved the termination of HHLS PAC less than two weeks later on March 22, 2006.<sup>2</sup> During the fourteen months that GSP PAC and HHLS PAC co-existed, no one at GSP, GSP PAC, HHLS or HHLS PAC was aware that the two separate segregated funds could have been construed to be affiliated political committees, nor was anyone associated with any of these entities aware that, pursuant to 2 U.S.C. § 441a(a)(5) and 11 C.F.R. § 102.2(b), affiliated political committees share a single contribution limit.

GSP PAC personnel were understandably alarmed to learn from the *Rollcall* reporter that the PAC might have committed additional FECA violations. GSP PAC's assistant treasurer called the FEC's general assistance line to inquire about the affiliation issue and was given references to a number of FEC advisory opinions dealing with affiliation of political committees. After reviewing these opinions, but being unable to determine whether or not GSP PAC and

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<sup>2</sup> Houston Harbaugh, P.C. assigned its entire interest in HHLS to GSP on December 21, 2005. GSP agreed to assume all of the assets and liabilities of HHLS in return. Accordingly, GSP has assumed liability for any potential violations of FECA and/or FEC regulations that may have been committed by HHLS PAC.

Jeff S. Jordan  
June 30, 2006  
Page 10

HHLS PAC were affiliated within the meaning of 2 U.S.C. § 441a(5), GSP PAC decided that the safest course would be to simply assume that the two PACs were affiliated and subject to a single contribution limit.

GSP PAC's assistant treasurer compared the GSP PAC and HHLS PAC FEC reports and concluded that, if the two PACs were considered affiliated, the combined PACs (1) had contributed fourteen hundred (\$1,400) more than the statutory limit to Santorum 2006, and (2) had accepted fifteen hundred (\$1,500) above the annual limit from both Joseph Kuklis and John Dick. That same day, GSP PAC's assistant treasurer wrote to Santorum 2006, explained that GSP PAC had just learned about the affiliation issue, and requested a refund of fourteen hundred dollars (\$1,400).<sup>3</sup> Santorum 2006 sent GSP PAC a fourteen hundred dollar (\$1,400) refund on May 4, 2006. The day after being told by the *Rollcall* reporter that it was impermissible for the PAC to accept contributions from individuals outside of GSP, GSP PAC issued a refund check in the amount of five thousand dollars (\$5,000) to Charles L. Hammel III. Shortly thereafter, GSP PAC personnel contacted an experienced FEC accountant and asked her for her opinion on the affiliation issue and the appropriate response. She confirmed that, if the GSP PAC and HHLS PAC were affiliated, the combined PAC had to request a fourteen hundred dollar (\$1,400) refund from Santorum 2006 and refund fifteen hundred dollars (\$1,500) to both Joseph Kuklis and John

<sup>3</sup> Neither GSP PAC nor HHLS PAC qualified as a multi-candidate committee pursuant to 11 C.F.R. § 100.5(e)(3). Accordingly, the two PACs together could only contribute a total of four thousand two hundred dollars (\$4,200) to Santorum 2006 for both the 2006 primary and general elections. 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 110.1(a). GSP PAC had contributed a total of four thousand one hundred dollars (\$4,100) in checks and in-kind contributions to Santorum 2006 and HHLS PAC had contributed an additional fifteen hundred dollars (\$1,500), for a combined total of five thousand six hundred dollars (\$5,600). Accordingly, the GSP PAC requested that Santorum 2006 refund fourteen hundred dollars (\$1,400).

29044235003

Jeff S. Jordan  
June 30, 2006  
Page 11

Dick. GSP PAC issued refund checks in the amount of fifteen hundred dollars (\$1,500) to both Joseph Kuklis and John Dick on May 22, 2006.

**Count-by-Count Response to the CREW Complaint**

In light of the preceding facts, the respondents reply as follows to each count of the CREW complaint in MUR 5749.

**Count I (CREW Complaint at ¶¶ 24-30)**

For the reasons discussed in the preceding section, Joseph Kuklis, John Dick and Charles L. Hammel III concede that during 2005 they each inadvertently contributed to GSP PAC more than the five thousand dollars (\$5,000) permitted by FECA. 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 110.1(d).

Similarly, GSP PAC concedes that during 2005 it accepted contributions from Joseph Kuklis, John Dick and Charles L. Hammel III that exceeded the five thousand dollars (\$5,000) permitted by FECA. 2 U.S.C. § 441a(a)(1)(C) and 11 C.F.R. § 110.1(d). GSP PAC emphatically denies, however, that it violated 2 U.S.C. § 441a(f) by *knowingly* accepting contributions in excess of the five thousand dollar limit.

**Count II (CREW Complaint at ¶¶ 31-33)**

GSP PAC concedes that Charles L. Hammel III's December 2, 2005 contribution to GSP PAC was made in response to a communication he was mistakenly sent by a GSP PAC official

29044235004

Jeff S. Jordan  
June 30, 2006  
Page 12

and that, accordingly, GSP PAC inadvertently solicited a contribution from an individual outside the PAC's restricted class. 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1).

**Count III (CREW Complaint at ¶¶ 34-40)**

Assuming without conceding that GSP PAC and HHLS PAC qualify as affiliated committees within the meaning of 2 U.S.C. § 441a(a)(5), GSP PAC concedes that neither GSP PAC nor HHLS PAC notified the FEC of their putative affiliated status pursuant to 11 C.F.R. § 102.2(b).

HHLS PAC emphatically denies that it solicited contributions from individuals outside its restricted class in violation of 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1). CREW's allegation that HHLS violated the prohibition on soliciting outside the restricted class is based solely on the fact that HHLS PAC received contributions from Joseph Kuklis and John Dick and CREW's naked assumption that they were not members of HHLS PAC's restricted class. CREW Complaint at ¶¶ 37-40. In fact, both Joseph Kuklis and John Dick were members of the initial Board of Managers of HHLS and, accordingly, were "executive or administrative personnel" of HHLS who were eligible to be solicited by HHLS PAC. 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1).

Assuming without conceding that GSP PAC and HHLS PAC qualify as affiliated committees within the meaning of 2 U.S.C. § 441a(a)(5), GSP PAC concedes that GSP PAC and HHLS PAC together contributed in excess of the maximum amount permitted by 2 U.S.C. § 441a(a)(1) and 11 C.F.R. § 110.1(a) to Santorum 2006.

29044235005

Jeff S. Jordan  
June 30, 2006  
Page 13

**Count IV (CREW Complaint at ¶¶ 41-42)**

Sean McDonald emphatically denies that he made an excessive contribution to Santorum 2006 in violation of 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b). As noted previously, CREW's allegation against Sean McDonald is based solely on a misreading of the FEC reports filed by GSP PAC and Santorum 2006. GSP PAC reported handling a two thousand dollar (\$2,000) earmarked contribution from Sean McDonald to Santorum in July 2004 and Santorum 2006 reported receiving that contribution in August 2004. CREW, for reasons unknown, came to the conclusion that these reports reflected two separate contributions by Sean McDonald when, in fact, these reports merely document both ends of the same transaction. Sean McDonald has made one and only contribution to Santorum 2006 during that committee's entire existence. Accordingly, there is no reason to believe that Sean McDonald violated 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b).

**Count V (CREW Complaint at ¶¶ 43-48)**

GSP emphatically denies that it used corporate resources to facilitate contributions to federal candidates in violation of 11 C.F.R. § 114.2(f). CREW's allegation against GSP in this regard is even more baseless than its allegation against Sean McDonald. CREW notes that GSP PAC properly reported serving as a conduit for a number of contributions from individuals to federal candidates and then points to John Dick's statement in an article in *The Philadelphia Inquirer* that, "It is definitely in our interest to support candidates that care about our projects and issues." CREW apparently chooses to interpret the word "our" in that innocuous statement to mean that GSP rather than GSP PAC has supported candidates for federal office. In fact,

29044235006

Jeff S. Jordan  
June 30, 2006  
Page 14

John Dick serves as the treasurer of GSP PAC in addition to being one of the founding principals of GSP. The single sentence upon which CREW chooses to hang its Section 114.2(f) allegation is nothing more than a generic statement that GSP PAC has made contributions -- both in-kind and by check -- to federal candidates. All of these contributions were reported by GSP PAC to the FEC. There is, accordingly, no reason to believe that GSP committed any violation of 11 C.F.R. § 114.2(f).

### **Conclusion**

For all the reasons set forth above, the Commission should find that there is no reason to believe that (1) Sean McDonald made an excessive contribution to Santorum 2006 in violation of 2 U.S.C. § 441a(a)(1)(A) and 11 C.F.R. § 110.1(b); (2) HHLS PAC solicited contributions from individuals outside its restricted class in violation of 2 U.S.C. § 441b(b)(4)(A)(i) and 11 C.F.R. § 114.5(g)(1); or (3) GSP facilitated contributions to federal candidates in violation of 11 C.F.R. § 114.2(f). The remaining respondents concede, however, that a number of other violations of FECA and/or FEC regulations did inadvertently occur, have already taken steps to ensure that similar violations cannot occur in the future, and hereby request that MUR 5749 be referred to the Alternative Dispute Resolution Office for resolution.

Respondents believe that alternative dispute resolution is appropriate in this case for a number of reasons, including (1) all of the respondents have agreed to alternative dispute resolution, (2) none of the respondents have committed any prior violations of FECA and/or FEC regulations, and (3) the allegations in the complaint do not raise any new or unusual questions of law, given that the respondents are prepared to concede, for purposes of alternative dispute

29044235007

Jeff S. Jordan  
June 30, 2006  
Page 15

resolution, that GSP PAC and HHLS PAC were affiliated committees for the fourteen months that they co-existed.

In deciding whether to refer MUR 5749 to the Alternative Dispute Resolution Office, it should also be noted that the respondents took steps to correct all of the violations identified in the complaint well before the complaint was filed. The respondents believe that the non-adversarial setting of alternative dispute resolution will be more effective in furthering these corrective actions and assuring ongoing compliance than the traditional enforcement process. Moreover, as a lobbying firm, GSP and its principals have a strong professional interest in ensuring ongoing compliance with FEC and all applicable FEC regulations in order to avoid any further embarrassment to its clients and elected federal officials. Finally, because the violations were detected early in 2006 and have already been corrected, they will have no impact on any race for elective office in 2006.

Respectfully submitted,



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Political Action Committee, John Dick, Joseph  
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29044235008